

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THOMAS KELLY and MICHAEL)
KRZESZEWSKI,)
)
Plaintiffs) Cause No. 4:15-cv-01825-JMB
v.)
) JURY TRIAL DEMANDED
MONSANTO CO., SOLUTIA, INC., and) ON ALL COUNTS
PHARMACIA LLC,)
)
Defendants)

**DEFENDANTS' IDENTIFICATION OF EVIDENCE SUPPORTING FEDERAL
OFFICER REMOVAL NOT CONSIDERED IN BAILEY**

Pursuant to the Court's request at the April 28, 2016 hearing on Plaintiffs' Motion to Remand, Defendants Monsanto Company, Solutia Inc., and Pharmacia LLC ("Defendants"), respectfully submit a list of the evidence submitted in the instant action in support of federal officer removal that was not before the court in *Bailey v. Monsanto Co.*, Case No. 4:15CV00844-AGF.

The following evidence supporting federal officer removal was submitted by Defendants in the present action, but was not before the Court in *Bailey*:

Defendants' Opposition to Remand Ex. A, U.S. Air Force Armstrong Laboratory, AL/OE-TR-1996-0153, Risk Assessment of Polychlorinated Biphenyls (PCBs) On-Board Navy Ships (Dec. 1996) (Doc. #23-1)

Defendants' Opposition to Remand Ex. C, HAGOV0000186-187 (Doc. #23-3)

Defendants' Opposition to Remand Ex. I, HAGOV0000158 (Doc. #23-9)

Defendants' Opposition to Remand Ex. J, HAGOV0000159 (Doc. #23-10)

Defendants' Opposition to Remand Ex. K, HAGOV0000160 (Doc. #23-11)

Defendants' Opposition to Remand Ex. L, <http://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/a/army-navye-award.html> (visited 2/2/16) (Doc. #23-12)

Defendants' Opposition to Remand Ex. M, HAGOV0000192-193 (Doc. #23-13)

Defendants' Opposition to Remand Ex. N, Fed. Spec. TT-P-28c (Doc. #23-14)

Defendants' Opposition to Remand Ex. O, 3/3/70 Call Report to W.F. Waychoff (Doc. #23-15)

Defendants' Opposition to Remand Ex. P, 6/2/70 Call Report to W. Clark (Doc. #23-16)

Defendants' Opposition to Remand Ex. Q, 9/8/70 Call Report to F. Miller (Doc. #23-17)

Defendants' Opposition to Remand Ex. R, 6/25/70 Call Report to W. Clark (Doc. #23-18)

Defendants' Opposition to Remand Ex. Y, collection of 25 Sales Invoices¹ (Doc. #23-25)

Defendants' Opposition to Remand Ex. AA, Vorhees Aff., Ex. 2, at 2, Jan. 11, 2011 ("Closed systems: electrical capacitors and transformers") (Doc. #23-27)

Defendants' Opposition to Remand Ex. BB, 10/17/1950 License Agreement (Doc. #23-28)

Defendants' Opposition to Remand Ex. CC, 3/3/1965 letter from General Electric to Monsanto (Doc. #23-29)

Defendants' Opposition to Remand Ex. DD, U.S. EPA, Explanation of Significant Differences for the 1991 Record of Decision at the Westinghouse Superfund Site in Sunnyvale, California, SFUND RECORDS CTR 158111 (March 1997) (Doc. #23-30)

Defendants' Opposition to Remand Ex. EE, U.S. Dept. of Transp., U.S. Coast Guard, Commandant Instruction M16478.2 (Nov. 16, 1991) (Doc. #23-31)

Defendants' Opposition to Remand Ex. GG, Monsanto, Aroclor Plasticizers Technical Bulletin No. PL-306 (Dec. 1960) (Doc. #23-33)

Defendants' Sur-Reply Ex. B, Trial Tr., Smith v. Monsanto Co., 4051:22-4052:18, Oct. 1, 2015 (Doc. #34-2)

¹ With the exception of the invoice dated 6/21/71 sold to New Cumberland Army Depot, all 25 invoices in Defendants' Opposition to Remand Ex. Y are new evidence presented in the *Kelly* case and were not included in the *Bailey* case.

Defendants' Sur-Reply Ex. C, Breivik, K., et al., Toward a global historical emission inventory for selected PCB congeners – a mass balance approach 2. Emissions, The Science of the Total Environment 290: 199-224, 216 (2002) (Doc. #34-3)

Defendants' Sur-Reply Ex. D, EPA, EPA-450/4-84-007n, Locating and Estimating Air Emissions from Sources of Polychlorinated Biphenyls (PCBs) at 58, 28 (May 1987) (Doc. #34-4)

Defendants' Sur-Reply Ex. E, Technical Factsheet on: Polychlorinated Biphenyls (PCBs) (Doc. #34-5)

For the reasons stated in Defendants' notice of removal and briefing in opposition to remand, and the reasons provided at the hearing, Defendants respectfully request that the Court deny Plaintiffs' motion for remand.

Respectfully Submitted,

THOMPSON COBURN LLP

By: /s/ A. Elizabeth Blackwell

A. Elizabeth Blackwell #50270MO
John R. Musgrave #20358MO
One U.S. Bank Plaza
St. Louis, Missouri 63101
(314) 552-6000 (telephone)
(314) 552-7000 (facsimile)
Email: eblackwell@thompsoncoburn.com
Email: jmusgrave@thompsoncoburn.com

HUSCH BLACKWELL LLP

Adam E. Miller #40945MO
Robyn D. Buck #51073 MO
190 Carondolet Plaza, Suite 600
St. Louis, MO 63105-3441
(314) 480-1500 (telephone)
(314) 480-1505 (facsimile)
Email: adam.miller@huschblackwell.com
Email: robyn.buck@huschblackwell.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 6, 2016, the foregoing document was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ A. Elizabeth Blackwell